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EXAMINER

GROSS, CHRISTOPHER M

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### **ADVISORY ACTION**

Continuation of 13

Applicant argues, see remarks filed 5/30/2008, that finality of the Office Action mailed 5/14/2008 is improper because the First Action on the Merits (FAOM) mailed 1/5/2007 indicated figure 28 as teaching a chitin binding column, whereas the correct figure should have been figure 32, as submitted in the subsequent Office Action made final mailed 5/14/2008. Applicant alleges the mistake precluded applicant's ability to substantively and constructively respond to a prior rejection based on Comb et al.

For the convenience of the reader, the rejection from said FAOM is shown below:

Claims 1-6,8-9,10-15,17-18 rejected under 35 U.S.C. 102(b) as being anticipated by Comb et al (US Patent 5,834,247).

Comb et al teach, throughout the document and especially figure 28 a chitin binding column for the purification of expressed proteins fused with an intein and chitin binding domain and absent evidence to the contrary the separation between adjacent ligand groups is greater than a predetermined minimum distance, thus reading on claims 1, 4 and 13 of the instant application. It is noted that the spacer molecule is "optional."

The fusion protein of Comb et al reads on the protein of claim 10.

Comb et al teach in columns 57-58 preparations of two types of substrates, including chitosan bound to sepharose and chitin itself. The former support reads on the oligosaccharide of claim 2. Therein the fusion protein of Comb et al also reads on the protein of claim 11.

For claim 3: Comb et al teach in column 57, line 17 sepharose is modified by 1,4-butanediol diglycidioxy ether which reads on claim 3 when the specificity determining ligand comprises  $R_1-O-R_5$  and  $R_1$  and  $R_5$  represent a normal aliphatic moiety. Therein the fusion protein of Comb et al also reads on the protein of claim 12.

For claims 5 and 14, the substrate of Comb et al is represents a bead.

For claim 8 and 17, the sepharose of Comb et al comprises a polysaccharide.

For claim 9 and 18, the substrate(s) of Comb et al comprises chitosan (e.g. see column 57, line 34).

Please note it has been subsequently discovered that the original rejection included a typographical error regard to the patent number of Comb et al, which has been corrected in this copy. The correct patent number (5,834,247) was indicated in the PTO 892 mailed 1/5/2007 as well as applicant's response entered 1/25/2008.

*Response to Arguments*

Applicant's arguments have been considered, but they are not persuasive for the following reasons.

(i) The above rejection states, with emphasis added, "Comb et al teach, **throughout the document** and especially figure 28..." Thus, the rejection relied on the *entirety* of the Comb et al reference, with attention being invited to figure 28. Therefore, applicant was put on notice that *all* of Comb et al was pertinent, including figures 28 as well as 32.

(ii) It should be further noted that chitin affinity columns are indeed discussed throughout the disclosure of Comb et al: see for instance columns 57 and 58, as mentioned in the above rejection.

(iii) In so far as figure 28 of Comb et al is concerned, it is noted, the brief description of the drawings for figure 28 per Comb et al states, "The target protein-intein-CBD fusion protein from the crude cell extract is purified by **adsorption to a chitin affinity column.**" Emphasis added. Therefore, despite the fact that figure 28 does not show a chitin column and applicants argument entered 1/25/2008 (i.e. "Applicant has scrutinized Fig. 28 as well as the specification, and respectfully notes failure to find any disclosure related to Fig. 28 that refers to a chitin binding column"),

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the description explicitly states that the fusion protein shown in figure 28 is fractionated on a chitin binding column, such as shown in figure 32 of Comb et al.

In conclusion, the entirety of Comb et al was pertinent to the above rejection and chitin affinity columns are discussed in at least 4 different places throughout Comb et al – including figure 28. Therefore, the examiner most respectfully submits that applicant was adequately placed on notice and not precluded from responding to the above rejection under 35 U.S.C. 102(b).

Applicant is reminded, however in accordance with MPEP 706.07(c), any question as to prematureness of a final rejection is an issue reviewable by petition under 37 CFR 1.181. See MPEP § 1002.02(c).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER M. GROSS whose telephone number is (571)272-4446. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. Douglas Schultz can be reached on 571 272-0763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner  
Art Unit 1639

/JD Schultz, PhD/  
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